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may not participate further in the proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 4.624 When may further proceedings be held?

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, the adjudicative officer may order further proceedings, which will be held only when necessary for full and fair resolution of the issues and will be conducted as promptly as possible.

(b) The adjudicative officer may order further proceedings on his or her own initiative or in response to a request by you or by the Department or other agency. A request for further proceedings under this section must:

(1) Identify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to resolve the issues.

(c) As to issues other than substantial justification (such as your eligibility or substantiation of fees and expenses), further proceedings under this section may include an informal conference, oral argument, additional written submissions, pertinent discovery, or an evidentiary hearing.

(d) The adjudicative officer will determine whether the position of the Department or other agency was substantially justified based on the administrative record of the adversary adjudication as a whole.

§ 4.625 How will my application be decided?

The adjudicative officer must issue a decision on the application promptly after completion of proceedings on the application. The decision must include written findings and conclusions on all of the following that are relevant to the decision:

(a) Your eligibility and status as a prevailing party;

(b) The amount awarded, and an explanation of the reasons for any difference between the amount requested and the amount awarded;

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(c) Whether the position of the Department or other agency was substantially justified;

(d) Whether you unduly protracted the proceedings; and

(e) Whether special circumstances make an award unjust.

§ 4.626 How will an appeal from a decision be handled?

(a) If the adjudicative officer is an administrative law judge, you or the Department or other agency may appeal his or her decision on the application to the appeals board that would have jurisdiction over an appeal involving the merits of the proceeding. The appeal will be subject to the same regulations and procedures that would apply to an appeal involving the merits of the proceeding. The appeals board will issue the final Departmental or other agency decision on the application.

(b) If the adjudicative officer is a panel of appeals board judges, their decision on the application is final for the Department or other agency.

§ 4.627 May I seek judicial review of a final decision?

You may seek judicial review of a final Departmental or other agency decision on an award as provided in 5 U.S.C. 504(c)(2).

§ 4.628 How will I obtain payment of an award?

(a) To obtain payment of an award against the Department or other agency, you must submit:

(1) A copy of the final decision granting the award; and

(2) A certification that no party is seeking review of the underlying decision in the United States courts, or that the process for seeking review of the award has been completed.

(b) If the award is against the Department:

(1) You must submit the material required by paragraph (a.) of this section to the following address:

Director, Office of Financial Management, Policy, Management and Budget, U.S. Department of the Interior, Washington, DC 20240.

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(2) Payment will be made by electronic funds transfer whenever possible. A representative of the Department will contact you for the information the Department needs to process the electronic funds transfer.

(c) If the award is against another agency, you must submit the material required by paragraph (a) of this section to the chief financial officer or other disbursing official of that agency. Agency counsel must promptly inform you of the title and address of the appropriate official.

(d) The Department or other agency will pay the amount awarded to you within 60 days of receiving the material required by this section.

Subpart G—Special Rules Applicable to Other Appeals and Hearings

AUTHORITY: 5 U.S.C. 301.

§ 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct his appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official.

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

§ 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative, in the Office of the Director, within 30 days from the date of mailing of the decision from which the appeal is taken. The notice shall contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied

upon and the relief sought. The appellant shall mail a copy of the notice of appeal, any accompanying statement of reasons therefor, and any written arguments or briefs, to each party to the proceedings or whose rights are involved in the case, and to the Departmental official whose action or decision is being appealed. The notice of appeal shall contain a certificate setting forth the names of the parties served, their addresses, and the dates of mailing.

§ 4.702 Transmittal of appeal file.

Within 10 days after receipt of a copy of the notice of appeal, the Departmental official whose action or decision is being appealed shall transmit to the Office of the Director the entire official file in the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.

§ 4.703 Pleadings.

If the parties wish to file briefs, they must comply with the following requirements: Appellant shall have 30 days from the date of filing of his notice of appeal within which to file an opening brief, and the opposing parties shall have 30 days from the date of receipt of appellant's brief in which to file an answering brief. Additional or rebuttal briefs may be filed upon permission first obtained from the Director or the Ad Hoc Appeals Board appointed by him to consider and decide the particular appeal. Copies of all briefs shall be served upon all other parties or their attorneys of record or other qualified representatives, and a certificate to that effect shall be filed with said brief.

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

§ 4.704 Decisions on appeals.

The Director, or an Ad Hoc Appeals Board appointed by the Director to consider and decide the particular appeal, will review the record and take such action as the circumstances call for. The Director or the Ad Hoc Appeals Board may direct a hearing on the entire matter or specified portions